

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	
)	
Billmax Properties,)	Docket No. 5-CAA-029-98
Farmington Hills, Michigan)	
and)	Proceeding to Assess
Upright Wrecking,)	Administrative Penalties
Detroit, Michigan)	under Section 113(d) of the
)	Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondents.)	

PARTIAL CONSENT AGREEMENT AND CONSENT ORDER

Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), initiated this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, by issuing and filing an Administrative Complaint (Complaint) against Respondents, Billmax Properties (Billmax) and Upright Wrecking (Upright) on September 25, 1998.

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I. PRELIMINARY STATEMENT

1. The Complaint alleges that Respondent, Billmax violated 40 C.F.R. Section 61.145(a) and (b). Specifically, the Complaint alleges that Billmax, as the owner of a demolition site, failed to inspect the affected facility where the demolition occurred for the presence of asbestos, prior to the commencement of the demolition in violation of 40 C.F.R. Section 61.145(a); and failed to provide the Administrator with a written notice of intent to demolish, at least 10 working days before demolition began in violation of 40 C.F.R. Section 61.145(b).
2. Billmax filed an Answer and requested a hearing pursuant to Section 113(d)(2) of the Act, 42 U.S.C. §7413(d)(2), and Section 22.15 of the Consolidated Rules, 40 C.F.R. § 22.15.
3. Complainant and Billmax have determined that this matter should be settled without a hearing or further proceedings, upon the terms set forth in this Partial Consent Agreement and Consent Order. For the purposes of this Partial Consent Agreement and Consent Order, Billmax admits the jurisdictional allegations set forth in the Complaint and neither admits nor denies the factual allegations set forth in the Complaint.
4. Billmax waives its right to a hearing on the allegations of the Complaint.

5. This Partial Consent Agreement and Consent Order shall apply to and be binding upon U.S. EPA and Billmax, its officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.
6. Billmax certifies that it is in full compliance with the asbestos NESHAP regulations.
7. Billmax and Complainant consent to the terms of settlement forth below.

II. TERMS OF SETTLEMENT

8. Based on the foregoing stipulations and findings, and having taken into account the seriousness and duration of the alleged violations, Billmax's full compliance history, degree of culpability, economic benefit or savings resulting from the alleged violations, the size of Respondent's business and the economic impact of the penalty on the business, and Respondent's good faith efforts to comply, Complainant agrees to mitigate, exclusively for Billmax, the twenty thousand and twenty dollar (\$20,020.00) penalty to ten thousand dollars (\$10,000.00).
9. Billmax consents to the issuance of this Partial Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

10. Within thirty (30) days after receiving a copy of this Partial Consent Agreement and Consent Order signed by the U.S. EPA Regional Administrator, Region 5, Respondent shall submit a cashier's or certified check in the amount of ten thousand dollars (\$10,000.00) payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

11. A transmittal letter, indicating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. The case docket number and the billing document number shall also be included on the face of the check. Respondent shall send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Nidhi K. O'Meara, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

12. The penalty specified in Paragraph 8, above, shall represent civil penalties assessed by U.S. EPA and shall not be deductible for purposes of Federal taxes.
13. Interest shall accrue on any amounts overdue under the terms of this Partial Consent Agreement and Consent Order at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of \$15.00 will be imposed if payment is not made within sixty (60) days after the Complainant files a fully executed copy of this Partial Consent Agreement and Consent Order with the Regional Hearing Clerk, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains.
14. This Partial Consent Agreement and Consent Order constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to the CAA, for the violations alleged in the September 25, 1998 Complaint against Billmax and its officers, directors and employees, only. Nothing in this Partial Consent Agreement and Consent Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of Billmax. Except as provided in the first sentence of this paragraph, compliance with this Partial Consent Agreement and Consent Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and

it is the responsibility of Billmax to comply with such laws and regulations.

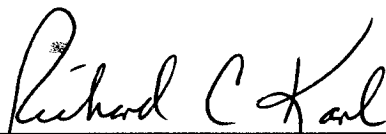
15. Billmax's failure to comply with any provision of this Partial Consent Agreement and Consent Order may subject Billmax to a civil action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the civil penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph 13 above. In any such collection action, the validity, amount, and appropriateness of this Partial Consent Agreement and Consent Order or the penalty assessed hereunder are not subject to review.
16. Except as provided in Paragraph 14, nothing in this Partial Consent Agreement and Consent Order shall be construed as prohibiting, altering or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Billmax's violation of this Partial Consent Agreement and Consent Order or of the statutes and regulations upon which this Partial Consent Agreement and Consent Order is based, or for Billmax's violation of any applicable provision of law.
17. Nothing in this Partial Consent Agreement and Consent Order shall relieve Billmax of the duty to comply with all applicable provisions of the Clean Air Act and other Federal, State and local laws and statutes.

18. Each undersigned representative of each party to this Partial Consent Agreement and Consent Order certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms of this Partial Consent Agreement and Consent Order and to bind that party to such terms.
19. This Partial Consent Agreement and Consent Order constitutes the entire agreement between Complainant and Billmax.
20. The parties hereto consent to the entry of this Partial Consent Agreement and Consent Order without further notice.
21. Each party shall bear its own costs, fees and disbursements in this action.
22. This is a "final order" for purposes of the "enforcement response" policy set forth in U.S. EPA penalty policies.

**U.S. Environmental Protection
Agency, Complainant**

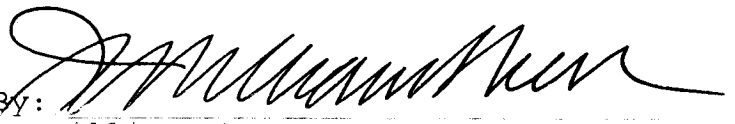
Date: 1-21-99

By:


Richard C. Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Billmax Properties, Respondent

Date: 1/12/99

By: 
W. William Sherr, Partner
Billmax Properties


PARTIAL CONSENT AGREEMENT AND CONSENT ORDER
Billmax Properties and Upright Wrecking
Docket No. 5-CAA-029-98

III. ORDER

The foregoing Partial Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent, Billmax, is hereby ordered to comply with the terms of the above Partial Consent Agreement, effective immediately.

Date:

January 22, 1999



DAVID A. ULLRICH
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I certify that on JAN 25 1999, I deposited in the U.S. Mail, certified mail, return receipt requested, a copy of the Consent Agreement and Consent Order (CACO) addressed to the following:

I. William Sherr, Owner
Billmax Properties
31555 West 14 Mile Road
Suite 101
Farmington Hills, Michigan 48334

I certify that a copy was hand delivered to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
77 West Jackson Boulevard (MF-10J)
Chicago, Illinois 60604-3590

I certify that a copy was sent via pouch mail to:

Susan Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. EPA
Room 1900
401 M Street, S.W.
Washington, D.C. 20460

Certified Mail Number

9664 397506

Date

1/25/99

Shanee Rucker
Shanee Rucker, Secretary
Enforcement Section (MI/WI)
Air Enforcement and
Compliance Assurance Branch

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